

In order that the public interest is served and protected, Professional Engineers Ontario investigates and prosecutes all cases where work that can be proven to be professional engineering is being undertaken by unqualified people. Yet few realize this.

Enforcing the Act

about once every month, someone in Ontario is caught by Professional Engineers Ontario (PEO) trying to pass himself or herself off as a professional engineer, according to recent statistics compiled by the association. And in 2001, PEO opened 132 files dealing with either use of a title to lead to the belief that an unlicensed person is a professional engineer or qualified to practise professional engineering, or actual illegal practise. In fact, PEO's enforcement program is among the most vigorous among Canadian engineering regulators and other regulated professions in Ontario (see "Holding out," pp. 28-31), and back in 1999, the Admissions, Complaints, Discipline and Enforcement Task Force concluded that the association's enforcement activities were working satisfactorily.

Yet, according to a recent survey from the Canadian Council of Professional Engineers (CCPE), professional engineers across Canada (including Ontario) feel that enforcing the licensing and title requirements of the provincial engineering acts against non-engineers should be the top priority of the provincial licensing bodies. In the write-in comments to CCPE's 2002 *Survey of the Canadian Engineering Profession*, the perception expressed is clearly that there is little enforcement going on.

So why the disconnect? One cause is likely the lack of coverage in the mainstream media of cases where PEO or its counterparts across Canada have been successful in shutting down unlicensed practice or stopping misleading use of titles. For, except for cases like that of Robin Scott Rice of Maple, Ont., in which Rice was convicted of several breaches of the *Professional Engineers Act*, with combined fines of over \$100,000 (see *Gazette*, Nov./Dec. 2002, pp. 4-5), few enforcement actions make the news.

Another seems to be a lack of awareness of the conditions that enable PEO to take action successfully against those holding themselves out as professional engineers.

That's why in November 2001, PEO Council approved implementation of the first phase of a communications plan aimed at raising awareness among diverse audiences of the nature and extent of PEO's enforcement function, PEO's role as the licensing and regulating body for the profession, and licensure in engineering. The first part of the plan (of which the cover stories in this issue of *Engineering Dimensions* are a part) is aimed at assisting professional engineers, EITs, and engineering students to become better informed about the enforcement process. Succeeding phases of the plan aim to raise awareness among external audiences having an influence on who will be responsible for professional engineering work. (See "Getting the message out," p.37.)

What is enforcement?

Whereas discipline is action PEO takes against professional engineers and Certificate of Authorization (C of A) holders over breaches of the provisions of the *Professional Engineers Act* and Regulation 941/90, and in particular section 72 defining negligence and professional misconduct, enforcement is action that PEO can take against individuals and companies that violate sections 12 and 40 of the Act. While certain exemptions are provided for, section 12 requires that anyone doing professional engineering work in the province must be licensed by PEO or work under the supervision of a professional engineer who takes responsibility for the work. Individuals or companies offering or providing engineering services to the public must hold a C of A issued by PEO. For individuals, the C of A is held in addition to the P.Eng. licence. Corporations that do not hold Cs of A cannot include the

term "engineering" in their names if it leads to the belief that they are qualified to offer or provide professional engineering services to the public.

Sections 39 and 40 enable PEO to take enforcement cases to both civil and provincial offences court. Section 40 provides for fines of up to \$25,000 for a first offence for individuals and companies who are found guilty of contravening section 12 of the Act, up to \$50,000 for subsequent offences. It also provides for fines of up to \$10,000 for a first offence (up to \$25,000 for each subsequent offence) for non-P.Engs found guilty of:

- ◆ using the title "professional engineer" or an abbreviation or variation as an occupational designation;
- ◆ using a term, title or description that will lead to the belief that the person may engage in the practice of professional engineering; or
- ◆ using a seal that will lead to the belief that the person is a professional engineer.

continued on page 36

Dollars and sense

The average cost to PEO of an injunction to stop an individual from using an "engineer" title to mislead ranges from \$3,000 to \$7,000, while the cost of a civil trial usually ranges from \$8,000 to \$10,000. About \$7 of a full PEO member's annual dues go toward the enforcement effort. By contrast, the cost per member for the enforcement program of the Royal College of Dental Surgeons of Ontario is about \$40. In 2001, PEO had no need to obtain injunctions but participated in two trials, whereas the dental college obtained six injunctions. Fines that are collected by the provincial government are paid into the province's Consolidated Revenue Fund. Costs awarded to PEO in enforcement cases where injunction orders are obtained, usually range from \$2,000 to \$6,000.

by Dwight Hamilton

Catching the bad guys

PEO's files are filled with examples of the ways PEO enforces the *Professional Engineers Act*. Here are some from an upcoming brochure on enforcement that illustrates both the benefits of licensing as a professional engineer and the ways an unlicensed person can try to deceive.

Is this person really a P.Eng.?

A person employed by a construction company solicits several government agencies and consulting engineering firms for business. On the person's business card, the title "P.Eng." follows the name. Some of the person's potential clients include professional engineers, and before considering the person's proposals, they undertake a routine check with PEO that reveals the person is not, nor ever has been, licensed. After a PEO investigation, the case proceeds to civil court and the person is fined a total of \$25,000.

When people hand over a calling card with "P.Eng." on it, they imply they've received all the training, passed all of the exams and are qualified to assume the responsibilities of a professional engineer. But buyers beware: The first step in checking proposals is to verify professional qualifications, according to those who routinely rely on providers of engineering services.

Your brother's keeper

The plans for a design of an addition to the heating and air conditioning system of a commercial complex arrive at the local building department. Professional engineers there are concerned about the quality of the drawings, which bear a P.Eng.'s official seal. Upon checking with PEO, the department finds that no one in the firm submitting the plans is a licensed engineer, nor does the firm hold a C of A. Someone with an identical surname is a P.Eng. licensed in Ontario, but when approached regarding the design

shortcomings denies any knowledge of the plans. During an investigation, PEO finds that the engineer's brother sealed the plans with a forged stamp

that he made from the original seal. When the case goes to court, the judge orders the false P.Eng. to surrender all materials that would lead the public to believe the firm could provide engineering services.

An engineer's seal is intended to indicate that he or she has reviewed a drawing or document and is taking full responsibility for the work. Others with lesser training can produce an engineering document or drawing, but ensuring their accuracy is a P.Eng.'s responsibility. Similar to a physician's prescription pad, a professional engineer's seal should be stored in a locked location, and once a professional engineer ceases to practise, it must be returned to PEO. It's the law.

Keeping current

In a routine check to verify the validity of a professional engineer's seal, PEO discovers that drawings were stamped by an engineer who allowed her licence to lapse. An order issued by a judge prohibits the engineer from representing herself as a P.Eng., and directs that she surrender her seal to PEO and pay all legal costs associated with the matter.

PEO's licences and Cs of A must be valid to be legal. A current licence to practise is a public safeguard, because holders of such licences are subject to the strict rules of their regulating body. Lapsed or retired members are therefore prohibited from practising professional engineering.

In P.Engs we trust

A flyer from a real estate agent arrives at the home of a professional engineer, offering a free appraisal. The agent uses the title "P.Eng." behind his name. Out of curiosity, the homeowner calls PEO, who has no record of the individual. PEO writes to the agent, but several requests for him to change his marketing approach are ignored. The court orders the agent to cease using the title "P.Eng." in any capacity, to pay all legal costs and to submit revised marketing materials to PEO as proof of compliance.

Trust can be invaluable in business. Ever wonder why so many professional engineers maintain their licences when they work in other fields? Business contacts know they have the qualifications of a professional and are obliged by their code of ethics to hold the public interest paramount. But if you want the name, you've got to play the game.

Not in Ontario

In a small town, an advertisement by a house builder piques the interest of a local P.Eng., since the builder is referred to as a professional engineer. Believing that she would likely know all the engineers in town, the P.Eng. checks with PEO. Inquiries find the builder has been using the professional title with his name in corresponding with the local building department as well, and that the builder is, in fact, licensed to practise professional engineering—in Alberta. The builder subsequently ignores PEO's correspondence informing that the building must become licensed in Ontario if the builder wishes to use the "P.Eng." here. The builder is later ordered by the court to refrain from

representing himself as a professional engineer until he gets an Ontario licence, and is ordered to pay PEO's legal costs.

While the work in this case is building houses, the man is leading his contacts to believe he is licensed to practise professional engineering in this province, which is untrue. A "P.Eng." title would be a great advantage in this sector, implying a higher level of expertise than is regularly required. Engineers must be licensed in each province in which they are working to ensure they are subject to provincial regulations.

Copy cat

A city building department receives drawings for an office complex that are riddled with

errors. Contacting the professional engineer whose seal appeared on them, the department learns the engineer had nothing to do with preparing or stamping the designs. The building department calls PEO, which finds that the person who prepared the drawings once worked for the professional engineer and took several unsigned adhesive duplicates of the engineer's seal. In the ensuing trial, PEO retains a handwriting expert to testify that the signature on the seals is not that of the P.Eng. The culprit is placed on probation and fines total \$15,000.

PEO strongly recommends against producing adhesive duplicates of seals for use on multiple copies of drawings, to avoid situations like this.

Since you asked...

The term "professional engineer" is used in Ontario to denote someone who is licensed to practise engineering as described in the *Professional Engineers Act*. Because "engineer" has been used to describe various positions having a technical component, legislation restricts the use of the title "professional engineer" to those who have been licensed by PEO on the basis of having the required education, training, experience and good character, and having successfully passed an examination on professional practice, ethics, engineering law and professional liability. Here are the most common questions from non-engineers about a confusing situation:

- Q. "The person handling the work said he is an engineer, but PEO has no record of him. So what do I do now?"
- A. The person might actually have an engineering degree and might also be working under the supervision of a P.Eng. If so, you are protected, although the person should not say he or she is an engineer. Also, the work in question may not be professional engineering, in which case there's no requirement for the person to be licensed by PEO. Or the person could be a fraud. A quick phone call to PEO will get you the information.
- Q. "The work looks fine, what's the big deal? Why do I have to get a professional engineer to take responsibility?"
- A. Many people can do some aspects of professional engineering work. Draftspeople, for example, can calculate and produce drawings, but they won't be accepted for a permit without being signed and sealed by a P.Eng. Because professional engineering affects public health and welfare, various public safety statutes, such as the *Building Code Act*, make it a legal requirement that a professional engineer be responsible for the work.

- Q. "I've already paid the guy for the contract. Will I get my money back?"
- A. On occasion, a judge will order someone found guilty of impersonating a professional engineer to repay moneys to misled clients, but PEO has no authority to act on behalf of clients to recoup funds spent on engineering work. Fines resulting from the legal action go to the Ontario government.
- Q. "We received a letter at work from PEO saying we can't call some of our employees engineers. We've been calling them engineers for years. Why do we have to change now?"
- A. PEO frequently requests revisions of job titles such as Software Engineer, Project Engineer or Junior Engineer. It's an offence to mislead the public to believe someone may be a professional engineer. While there are exceptions to this rule for titles that are specified in other legislation, there are not many of them.
- Q. "My firm has been told some of its functions include professional engineering, so we have to go out and hire a P.Eng. now. Our employees are all well qualified and we've never had a problem. Why do we need a P.Eng.?"
- A. Individuals practising professional engineering without a licence can be found guilty of an offence under the *Professional Engineers Act*. If the company that employs them is offering professional engineering services to the public, the company will be found guilty under the Act for not having a Certificate of Authorization. If the company wants to continue to provide professional engineering services to the public, it will have to hire a P.Eng. to assume responsibility for its engineering work in order to obtain a C of A.



I think as a result of the letter writing campaign over the last few years, companies are becoming educated about what constitutes a professional engineer,” says Eric Newton, manager, legal affairs for PEO. “They’re becoming more sophisticated in what titles are misleading. This has resulted in them being much more correct in advertising for what they want.”

continued from page 33

How much is enough?

In 2001, PEO received 244 enforcement-related inquiries by letter, telephone, fax or email. The subjects raised included the use of the engineering/engineer titles, consent to use the term “engineering” in a company name, licensure of engineers in the armed forces and the federal government, use of the P.Eng. outside Ontario if an individual isn’t licensed in the jurisdiction of use, and the use of “engineer” titles under the *Operating Engineers Act*, among others. Assistance was given to the human resources department of Ontario Power Generation, which asked for the proper wording for the advertisements for certain positions.

Besides responding to questions on enforcement, PEO staff monitor listings in various Yellow Pages directories under the “engineering” and “engineering—consulting” headings and cross reference them against PEO’s list of entities that hold Cs of A. The outcome of this review is PEO providing a list to the Yellow Pages’ publisher of firms that don’t hold C of As. By agreement with PEO, the publisher then forbids the firms from listing in these sections until they obtain a C of A. In 2001, the most recent year for which statistics were available when this issue of *Engineering Dimensions* went to press, the listings of 205 firms offering engineering services to the public without a C of A were found; 14 were repeat offenders.

PEO’s enforcement staff also check the classified sections of the Toronto daily newspapers, looking for ads for positions

like “systems engineer” that do not specify licensing as a professional engineer as a condition of employment. In these cases, PEO informs the advertisers about the requirement for licensure for individuals in positions that involve professional engineering, unless the position holder is to be supervised by a professional engineer. PEO informs about the proper use of the engineer title, since sometimes a position is called a “_____ engineer” when the work involved isn’t professional engineering. In 2001, PEO wrote 33 such letters, compared to 82 the year before. In addition to the hard-copy dailies, staff now also monitor the Internet job sites such as Workopolis, for both misleading advertising and identification of companies that might be offering professional engineering services without a C of A.

“I think as a result of the letter-writing campaign over the last few years, companies are becoming educated about what constitutes a professional engineer,” says Eric Newton, PEO manager, legal affairs, who manages PEO’s enforcement function. “They’re becoming more sophisticated in being able to identify what titles might be misleading. This has resulted in them being much more correct in advertising for what they want.”

PEO also continues to take part in a program with other provincial associations that sees the sharing of the names of individuals who reside outside of the province in which they’re licensed and who have not applied for licensing in the province where they live. Staff in each province contact those who are licensed in another province but live within their province to

ensure they are aware of the requirement for licensure if they practise professional engineering within the province.

Clear, cogent, convincing

According to Newton, the most important thing PEO members can do to assist enforcement efforts is to provide supporting evidence, such as a business card. In cases of misuse of title, courts insist upon tangible proof that someone has been, or could be, misled into believing a person is a professional engineer, he cautions. There is little to be gained from taking court action without evidence, he adds.

PEO also requires clear, cogent, convincing evidence when tackling cases of non-P.Engs practising professional engineering without the supervision of a professional engineer. In a court of law, the word of a professional engineer who “just knows” that Acme Corp. is allowing unlicensed engineers to do certain jobs that the engineer thinks are professional engineering jobs will not be enough. For enforcement purposes, an activity must fall within the definition of professional engineering in section 1 of the Act to be within the scope of practice the legislation reserves for licensed practitioners.

“In an industrial situation, you could have two people doing the same job, one a PEO member and the other not. The member feels that the other person, who is maybe an engineering graduate, should be licensed and that PEO should enforce this,” says PEO President-elect Ken McMartin, P.Eng., who is also a member of the Standing Committee on Enforcement.

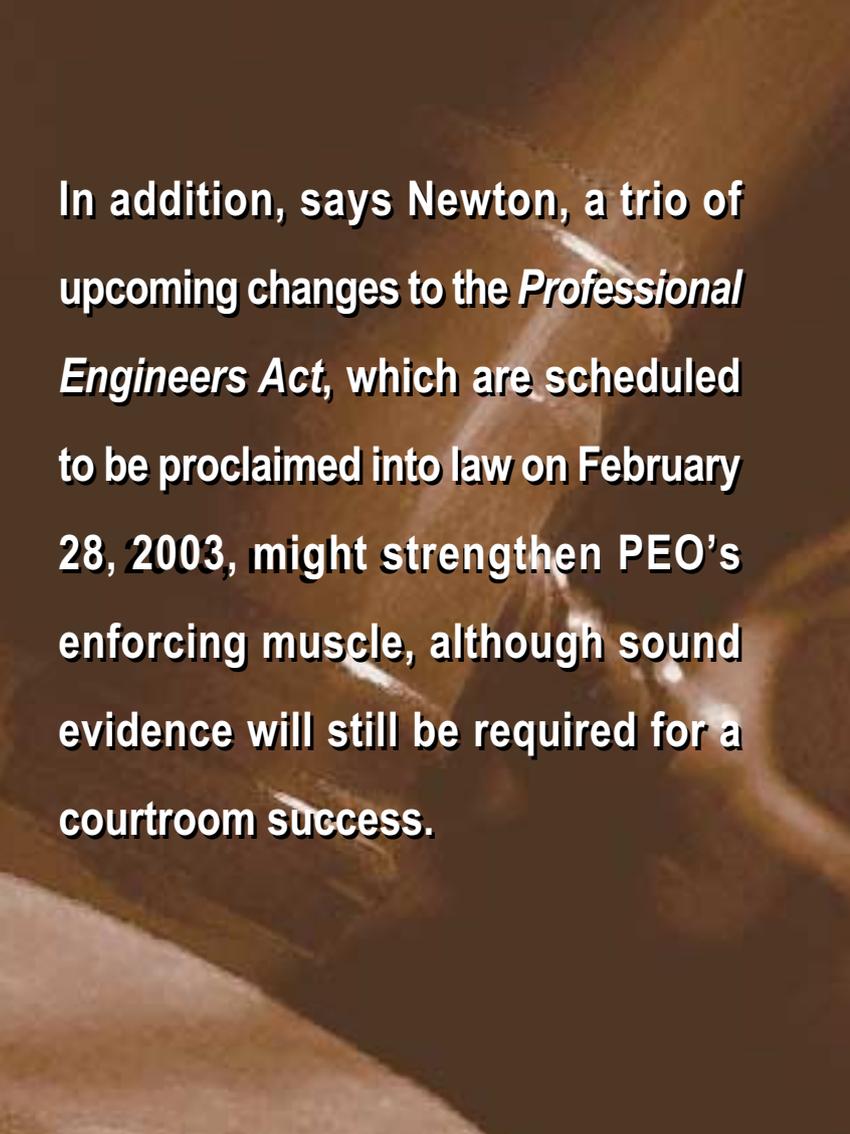
“The problem, however, is that the job may not involve any activities that are within the Act’s definition of professional engineering. For something to be the practice of professional engineering, all three criteria set out in the Act have to exist: You have to be designing, analysing and so on, utilizing engineering principles, and concerning the safeguarding of life, health, property or the public welfare. But not including practising as a natural scientist.”

Because this definition is wide-ranging and open to interpretation, considerable investigation is needed in each case just to define whether the work is professional engineering. Nevertheless, McMartin believes it is a professional engineer’s duty to inform PEO of any instance where they suspect professional engineering is not being done under the supervision of professional engineers, or when they believe unlicensed people are leading others to believe they are qualified to practise professional engineering.

To help them exercise this duty and as part of the overall enforcement communications plan, PEO is introducing a new, toll-free enforcement hotline to provide a quick, anonymous, identified point of contact for enforcement-related questions or to report a possible enforcement situation for PEO to investigate. The number will be prominently displayed on PEO materials and on the website, and its use promoted to those most likely to be a source of enforcement inquiries.

In addition, says Newton, a trio of upcoming changes to the *Professional Engineers Act*, which are scheduled to be proclaimed into law on February 28, 2003, might strengthen PEO’s enforcing muscle, although sound evidence will still be required for a courtroom success. The first of the changes will except from the requirement to be licensed under section 12 those using the title “engineer,” or an abbreviation of it, only where such use is authorized or required by another Act or regulation. A complementary change to section 40 will impose a fine of up to \$10,000 for a first offence and up to \$25,000 for each subsequent offence on anyone who is not a licence holder and who uses the title “engineer” or an abbreviation of it in a manner that will lead to the belief that the person may engage in the practice of professional engineering. This provision is in addition to the three title provisions already included in the Act and described earlier in this article. The third change will require the defendant to prove that the defendant’s use of the title “engineer” or an abbreviation has not been misleading, except where the use of the title is authorized by other legislation. Previously, it was up to PEO to prove that the use of the title had misled.

But it’s too soon to tell how much more muscle these changes will provide. PEO will need some experience operating under them before their effectiveness can be measured. ◆



In addition, says Newton, a trio of upcoming changes to the *Professional Engineers Act*, which are scheduled to be proclaimed into law on February 28, 2003, might strengthen PEO’s enforcing muscle, although sound evidence will still be required for a courtroom success.

Getting the message out

PEO Council approved the first phase of the enforcement communications plan in November 2001. This phase is directed at PEO staff, officers and members. New Council members now receive an orientation that describes their role in protecting the public. As well, an information kit including a brochure that features a list of infractions and associated fines, case studies and a set of frequently asked questions has been developed. In addition, an enforcement telephone hotline for complaints and enquiries has been set up and its number [(416-224-9528 ext. 444)] included on PEO stationary and posted on PEO’s website.

Once the internal audiences have received this campaign, PEO will focus on the next group of stakeholders and the next level of tactics. During that stage, PEO will target mostly risk managers, who have an interest in ensuring that projects are managed by people who comprehend risk principles and can appropriately manage risk. After an assessment, PEO Council will then announce the timing of the third and final stage. It’s intended that improving communications about enforcement will have a ripple effect, enhancing the understanding of what it takes to be a professional engineer and the value that the profession provides via its accountability. The enforcement communications plan can be viewed in its entirety at www.peo.on.ca under “enforcement notices.”